City of Lafayette
Lafayette City Council
Redevelopment Agency Meeting

MINUTES

Lafayette Community Center – Manzanita Room **July 27, 2009**
500 St. Mary's Road, Lafayette, California **7:00 p.m.**

1. CALL TO ORDER

Mayor Tatzin called the Regular City Council meeting to order at 7:02 p.m.

2. ROLL CALL

Present: Vice Mayor Andersson, Councilmembers Anderson, Anduri and Federighi

Absent: Councilmember Tatzin

Staff: Steven Falk, City Manager; Tracy Robinson, Administrative Services Director; Ann Merideth, Community Development Director; Niroop Srivatsa, Planning & Building Services Manager; Tony Coe, Engineering Services Manager; Mark Robbins, Code Enforcement Officer; Michael Cass, Assistant Planner; Jennifer Russell, Parks, Trails & Recreation Director; Mala Subramanian, City Attorney; Joanne Robbins, City Clerk

3. PLEDGE OF ALLEGIANCE – led by Vice Mayor Andersson

4. ADOPTION OF AGENDA

City Clerk Robbins reported that Item 10.I had been added to the agenda.

ACTION: It was M/S/C (Anderson/Federighi) to adopt the agenda. Vote: 4-0-1 (Ayes: Andersson, Anduri, Federighi, Anderson; Noes: None; Absent:Tatzin).

5. PUBLIC COMMENT - None

6. PRESENTATION - None

7. OLD BUSINESS

A. Continued consideration of a request from Contra Costa Certified Farmers' Markets, Inc. to use Lafayette Plaza for a farmers' market pilot program
Recommendation: Discuss and direct staff.

Ms. Merideth reported that the item had been continued from the last Council meeting and there was no new staff report.

Vice Mayor Andersson opened the public hearing.

Public Comments:

LESLIE WESTPHAL, Environmental Task Force member, discussed support for the Farmers' Market, certification of growers, said a group has been meeting regularly to discuss ways to hold the market without hurting local merchants and CCFM stood out due to their desire to keep it local and successes in local communities.

Councilmember Anduri questioned whether a 5-night trial was being proposed, and Ms. Westphal said this has been reduced to 3 Thursdays in September. Councilmember Anduri said a couple of issues raised had to do with parking for vendors and patrons, and he asked what had been worked out. Ms. Westphal reported that parking for vendors has been provided by the Methodist Church and asked to defer patron parking to another speaker. Regarding costs, Ms. Westphal said they have worked out all costs for the market to operate.

Regarding site selection, Councilmember Anduri confirmed with Ms. Westphal that originally proposed were 6 or 7 sites to be reviewed in depth; they are continuing to look at other sites, but the preferred site provides a central, visible location, there have been other successful events, and the preferred site allows for access to dinner houses and other businesses. However, she said they are willing to look at other locations, as well.

Councilmember Federighi questioned whether signs would be addressed. Ms. Westphal said they have agreed to donate their own funds to cover the cost of signs. Regarding exploring other sites, Ms. Westphal said over the last 6 months, CCCFM drove to the South BART parking lot, the Veterans Hall parking lot, the church on Carroll Lane and the Hungry Hunter parking lot. Prior to that, they looked at 6 or 7 other sites in addition to certain streets.

Councilmember Federighi referred to parking for certain businesses and said at the last meeting, there was agreement for signage that indicated, "parking restricted for businesses" or "no farmers' market parking at the request of the business". She voiced concern about the drawing which shows the area which will be blocked off on Golden Gate Way which indicates, "street open to residents". She confirmed this was located next to the Assistance League. She said there is another street that services Vino's Restaurant and some other businesses, and she confirmed this would remain open.

DIANE MCNALLY, CCCFM Volunteer and Boardmember, reviewed the five points of concern from the last Council meeting, stating they propose an adjustment in the schedule to a 3 Thursday farmers' market for September 3, 10, and 17. They will cover costs to be paid by the City, impact on the business community, local and what that means, the site selection process, and parking issues. She said prior to the last Council meeting CCCFM had delivered to the City a 30-page marketing and business plan. It covered the criteria for establishing a successful market in Lafayette, why the selection of CCCFM from Market Management are references, site selection candidates and with the review process for the pilot location and attachments included were print-outs from their website, newsletters, postcards, brochures, and aerial maps. Regarding the 5 points, there will be no cost to be paid by the City. Going forward, any funds directed to the market showing support would be appreciated but not mandatory, and she said they will cover their own costs.

Regarding the impact to the business community, they cite a study developed by California Department of Agriculture and Economic Analysis for a seasonal market and noteworthy is the spin-off rate. For every $1 spent at farmers' markets, up to $3 is spent at neighboring businesses,

resulting in a welcome revenue stream. Regarding what local means, according to a study by UC Davis, the average food in the USA travels 1500 miles to the dinner plate. Their farmers would originate from less than 100 mile radius. Currently, they have 8 farmers and 4 backyard farmers and gardeners in Contra Costa County and they total 30 farmers within a 50 mile radius from multiple counties. She discussed their growing methods and said local resident gardeners are welcome to sell their product and would need to meet the same certification standards of the Agricultural Department. Currently, Lafayette does not have enough local resident gardeners or crop variation to sustain a farmers' market.

Regarding site selection, there were 13 sites that were alternatively reviewed and they listed the pro's and con's for each site. Some factors considered were size, centrality, visibility, environment, whether ensuring the market has an attractive location, interfaces well with the neighborhood, encourages shopping, lingering, safety, transportation and parking, water access, restroom access, ground surface, Health Department requirements, stall layout, ownership, cost and insurability of the property, zoning, fire regulations and law enforcement. They concluded that Central Plaza is ultimately the ideal location for the pilot program. Even though it has a small footprint, it is highly visible and good for the pilot program. She said the selection process involves review of the saturation in the surrounding area on Thursday which is a good time, and as a pre-weekend day, the pick of the produce is gained. They seek to tie into community events and capitalize on Thursday as being a popular dining out night.

Regarding parking for barricades, a donation has been secured to cover the cost of the barricades at $1,000, and they secured a pledge of $2,000. CCCFM will provide storage for the barricades. Regarding parking for vendors, they have received a commitment from Methodist Church for 2009 and they will also consider the use for 2010 if the trial is successful. The farmers' loading needs should be given top priority consideration during a site selection process. A site with these considerations will make Lafayette the top priority for farmers. They can provide placement of signage which state, "No farmers' market parking per owner request" and they included a map of vendor traffic flow. For shoppers, they are selecting the location for community events, they provided a list of different street side parking, market volunteers are developing a community campaign to encourage people to walk and bike to the market, offer a veggie valet service available for shoppers at the conclusion of their shopping, where they can park their bags, get their car and then pick up their bags.

In conclusion, volunteers are willing to step forward and facilitate bringing a market to Lafayette and she looks forward to working with them and the City to bring this goal to fruition and she asked the Council to reconsider the proposal.

Councilmember Federighi referred to cost and asked if the plan was to purchase the barricades as opposed to getting them from the City. Ms. McNally said they have the option to work out a plan from borrowing or renting from other cities. They would not want the city to purchase barricades if the plan does not go forward for 2010.

Councilmember Federighi said part of the issue was that if CCCFM obtained the barriers from the City, someone would have to pick them up, put them in place, and then return them. If the City did this, it would involve a cost and she asked what the plan is. Ms. McNally said their market management takes care of picking them up, placing them and removing and storing them. However, she confirmed they would not obtain the barricades from the City of Lafayette.

Councilmember Federighi referred to signs and believed that a sign stating, "No farmers' market parking at owner's request" is somewhat soft. She would prefer something stronger and

questioned whether this would be monitored. Ms. McNally said the signs are sandwich boards already made up and used at other markets. Councilmember Federighi questioned who from CCCFM was in charge, and Ms. McNally said they are a large group and confirmed Ms. Neu was the Executive Director and could speak on the matter.

JESSIE NEU, Executive Director, CCCFM, said she would be the point person and they have spoken with community representatives. Janet Thomas who is absent tonight has indicated there would be crossing guards from Acalanes High School and they could also monitor parking which she believed would work out.

Councilmember Federighi said it was asked at the last meeting that the group explore other sites and she asked for more explanation other than a drive by of other sites. Ms. Neu said they visited the Veterans Hall and spoke with the property manager who indicated they would be receptive of holding an event there. They discussed days and times it would be more convenient for them. The City indicated that Butler-Conte was not a viable location because they were already reviewing plans regarding their senior development. Regarding churches, they have communicated with a church on Carol Lane with two large parking lots, and pro's and con's are listed in the packet materials for each location. They made calls to Stanley Middle School, Acalanes High School, and because some places are closed for vacation, returning phone calls was difficult. However, they can pursue other locations.

Councilmember Federighi said it this site proves problematic she confirmed that CCCFM would be willing to adjust to another location after the trial. Ms. Neu said they will conduct a survey of citizens and their farmers, and because it is a central location and a place which community members identified as an ideal location, this is what they are exploring first.

Councilmember Federighi questioned and confirmed that BART had not been explored yet.

Councilmember Anderson apologized for the process and said everybody supports the farmers' market and wants it to succeed. The reason for the drawn out process is that hopefully, the place the first market is held will hopefully be the one in which they can stay. He voiced concern after review of the sites' ratings, there are comments that indicate difficult location, not a destination, too hot, and there is no ranking of the Plaza Park at all. He questioned whether the Plaza Park was ever assessed against any of the other sites. Ms. Neu said Plaza Park was at the top of the list, they spoke with the Chamber of Commerce, they have addressed parking, other events were held there in upwards of 400 people attending, they close 3 blocks of Mt. Diablo Boulevard and clearly the City has solved those problems through the other events held. Councilmember Anderson noted that when the Art & Wine Festival is held, they have BART parking and a shuttle.

Councilmember Anderson hoped to find a place for the market, was concerned there was not more thorough investigation of the other sites because he believes there are better opportunities, such as good parking and little impact on neighbors. He believed that the period of adjustment for people will last longer because businesses are struggling, and often, when one more piece is added to the mix, that is the one to get blamed for the problem no matter what the actual situation is. Therefore, he cautioned Ms. Neu as to whether it is the right site or not.

Councilmember Federighi noted, belatedly, that CCCFM is required to have the produce on a paved area and this is a reason why the only area that the farmers' market itself is on is the parking in front of the Plaza Park businesses. She echoed concern about this location, noting that the lawn or street cannot be used.

STEVE RICHARD, Sustainable Lafayette, said from a marketing professional, people who really want to shop at farmers' markets are already shopping at farmers' markets in Moraga, Walnut Creek and Orinda. Also, many shop at Nob Hill for products. The bulk of those who go to farmers' markets are already going and there is an opportunity to bring all those people back to Lafayette. He said if there was an estimated 400 people are leaving the City every weekend and spending $40, this is $800,000 a year of business that is being conducted out of town that could be brought back. If they are spending more with neighboring businesses, it is well over $1 million. Another key point is the notion of a multiplier effect or same trip spending. He said Entrepreneur Magazine summarized all research on farmers' markets from the last 10 years and a couple examples showed that in Oregon, the sum of same trip spending outside the market varied anywhere between $4,400 and $38,000 per market on a single day. Another study done in Maryland on 3 farmers markets and if you bring the business back and piggyback on top of it, it could be well in excess of $1 million opportunity.

Councilmember Anduri questioned how close do nearby businesses have to be to benefit from the multiplier effect. If the market was at Hungry Hunter, he asked if it would be the same as if it was in the Plaza Park. Mr. Richard said he was not sure, but common sense would be that businesses in the immediate vicinity will see the uptake. He felt the Hungry Hunter location would not yield people walking to other businesses from that location.

BETH FERREE said they have a strong group of volunteers of adults and students to monitor parking, they explored other sites and feel that the Park Plaza should be given a fair chance because they believe it will draw business to Lafayette and strengthen the downtown, which none of the other places will. She said there is a lot of metered parking in the area and the City stands to make good money from this. There is also off-street parking, felt access to the bike path will be another draw for families, she noted all non-profits, artists, local farmers will be on the grass, there are many people who are committed to provide the manpower, barricades, and after three times, if it turns out it is not the right place, they will figure out something else and move.

Councilmember Anderson said he appreciates Ms. Ferree being the crossing guard and parking monitor which shows interest in ensuring the events are successful without negative effects to businesses. He said the events are contingent upon this and confirmed with Ms. Ferree that she believes there is a strong, committed group of people who want to see the farmers' market happen and many wonderful things can happen through volunteer efforts.

CAROL SINGER said she is a big supporter of farmers' markets, attends the Walnut Creek and Moraga markets with her grandchildren almost every weekend. She feels it would be wonderful for Lafayette to have a market; however, her neighborhood is up Moraga Road. They have had a board meeting and are willing to experiment, but their concern is why the matter did not go to the Circulation Commission. She questioned Ms. Sinnette who indicated this was a request of the City Council like the Art and Wine Festival. She finds very little in the staff report regarding any concern for people who must get out of southern Lafayette along Moraga Road, which is of concern. She discussed safety concerns when trucks arrive and children present in the area, voiced concern with the location, commute traffic, and said many people will cross the street, park in Safeway and she said they are willing to see how it goes. She voiced concern about parking and hopes it is monitored, as well as concerns with grass and maintenance issues.

CAROL LU ZISCHKE said she was delighted Jay Lifson promoted this, is tired of hearing her Orinda friends talk about their expenditures at the farmers' markets, spoke of Lafayette's slowness in making money and asked the City to "wake up". She spoke of people who embrace the idea, who walk and shop, and supported the farmers' market.

REBECCA CALAHAN KLEIN said she founded an organization called, Organic Exchange, and work with about 150,000 organic farmers around the world. She echoed comments of other speakers, said she surveyed 30 friends and on average, they spend about $500 per month on produce, most shop at one farmers' market at the least per week, if this were a year round market, she and her friends would spend about $150,000 a year and would love to have this benefit the farmers and the community. In terms of location, it makes a huge difference, she felt the location would be great in a walk able area, acknowledged concerns voiced, and suggested looking at Golden Gate Way, closing off First to Second Street before the parking structure for the new library and possibly changing the hours a bit. If it were a little later in the day, those businesses are closed by 5-5:30 p.m. and it would be a way to achieve paved road and parking on Second Street and First Street. She also said she is a member of Temple Isaiah and she would be happy to talk to them about a potential location, as well. Lastly, she felt they could have a linkage to the Learning Center, as kids do not know how to cook, and she suggested holding lessons on cooking, fitness, agriculture, etc. and she volunteered to be a parking monitor, fundraise or other services.

Councilmember Anderson questioned if Ms. Klein saw the location survey, noting that Golden Gate Way is identified. Ms. Klein said she was coming into the process late, but will continue to provide any feedback.

CHUCK STUART complimented Councilmembers for asking about location, congratulated Carol Singer for bringing up the traffic issues, wished more copies of the packet could be provided and he read into the record his letter regarding locating the farmers' market on a postage sized parcel. He cited limitations, believed a location that could perhaps encourage growth if successful and assure safety of operations, felt it was counterproductive to produce a crowd-producing activity within a relatively short expanse of time on a weekly basis to be held on a postage-sized area at the busiest intersection of town. He said the trial or pilot program is to be held on one of the busiest times of the week during peak business and traffic hours. Traffic movements are often indecisive; he suggested an alternate location with proper analysis and asked not to remove parking from businesses.

JOANNE ARCHER asked the Council to approve the trial for three times, supported the Plaza location because it helps seniors to be able to walk there, it introduces them to eat more vegetables and fruit, and felt the location was key in getting it established. She felt going to the Moraga farmers' market makes her eat better and healthier, asked that the market be within walking distance for seniors and families and asked for approval. She felt the Veterans Hall was too far for seniors to travel to.

MARY THOMAS, spoke on behalf of her mother who has organized the matter, said many of her friends are interested in the subject, felt it was telling that everyone believes the market would be successful, there is community support, understands the Council's role in ensuring safety, but she felt there is strong support for giving it a try in a walk able location. She noted that her mother is getting continuous support, volunteerism and energy.

LEONARD HOLMES said he is sympathetic to all those who live on the south side of town, said many know already that before a market comes in, that the best way to get out of town is to go over Snake Hill or Glorietta, and it is known that the central intersection is congested. He is conflicted on the matter, supports the idea of a farmers' market, but common sense tells him that the location does not make sense. His neighbor suggested asking what problem or trial does the farmers' market in this location solve, and the best he could tell is that it solves a request or goal

of the Environmental Strategy that says to develop elements that support and enhance community values in Lafayette, which he agrees it does. Local produce has been answered, but the question is, what problems will a farmers' market at this location will create? He suggested parking, pedestrian impact on traffic, police services and finance, and he felt the Circulation Commission should look at this or an EIR be done. He hoped for another location like the BART parking lot.

DARRYL WONG, said he grew up in Lafayette but now runs a 10-acre farm in Santa Cruz, said he has a vested interest, and while it is further than what he would like to travel, he is excited it is happening in his home town, felt markets are taking off all across the state, and acknowledged the issues discussed. As a vendor, the market's location will make this a successful venue, said Santa Cruz has three farmers' markets, and the downtown market is the best and biggest with the most restrictive parking, which he is sure has been dealt with. He felt the costs and benefits need to be weighed versus parking issues. As a vendor, he would be less interested in locating at Hungry Hunter.

Councilmember Anduri questioned what Mr. Wong grows, and Mr. Wong said they grow about 30-40 crops; blackberries, strawberries, lettuce, broccoli, cabbage, cauliflower, onions, etc.

DAVID BRUZZONE reiterated what his mother, Joan Bruzzone, said at the last meeting—they host a farmers' market in the Moraga Center. They are aware of issues, claims and whether or not the 3:1 is accurate or not, and he felt a farmers' market could be great for the community, as there are significant economic impacts to retailers and merchants. Time and location are most important—Thursday night and the Plaza Park is not the only acceptable venue to create community in Lafayette. He said people want to create community, but he felt there are many. An ideal place would be the BART parking lot. He said the farmers' market does not have to take place on a weekday, said most are on weekends, and the BART parking lot would be ideal. He acknowledged the significant parking issues at Safeway, said at a minimum there will be 430 cars to find a place to park which will restrict businesses in the area. He felt BART, Acalanes High School, Veterans Hall, and the Community Center were great locations, and he did not believe locating it in an already congested area was right.

JORGE QUINTERO, Lafayette Pet Shoppe, said he was not for or against the farmers' market, but wanted to bring up issues regarding parking because he is immediately affected by events at the plaza. He said the parking lot in the rear below to his store as well as other shops in the building, and people will be directly affected. When the farmers' market begins, cones will be placed on Golden Gate Way which will be closed and his customers will not be able to park in the front or rear of the building. People cannot also make a U-turn on Moraga Road and they will not be able to shop at his store. He said he is trying to get customers back in town to shop at his store, and asked the Council to consider how this will affect him.

Councilmember Anduri confirmed with Mr. Quintero that the parking lot on the south side is right next to the theater and when the City has events in the plaza, people park in that lot, leaving no parking for the several businesses in the center. Councilmember Anduri questioned whether signage is put out, questioned whether or not Golden Gate Way would incur closed access, and he confirmed with Mr. Quintero that the Chamber of Commerce puts up signs, but it does not keep people out. Mr. Quintero said having monitors there may help, but if there are vendors are located along Golden Gate Way and his customers cannot make a U-turn, they will not have access to his Shoppe.

HEIDI RAHLMANN PLUMB said she recently moved back to town because of the community, she supported the farmers' market and said the spot was great for walking traffic to businesses and restaurants and a great community connection. She hoped the Council will allow the pilot program to occur and assess it, but she felt the BART parking lot will not provide the same foot traffic.

DAN SPEIR said he was first excited about the farmers' market, hoped to have an opportunity to use the bike trail to get to the market and he hoped for a centralized location like the plaza. He acknowledged the congestion issue but felt the trial period would reveal a lot.

BECKY SHAFI said she is a small business owner off of Mt. Diablo Boulevard and cited the lack of foot traffic and downtown like Walnut Creek and Danville's main streets. Adding a farmers' market would cause problems with traffic and she felt there were things to make the downtown more vibrant. Some towns have done perpendicular parking and add more parking to slow down traffic and make people walk. She also supported the City providing walking trails, bike paths, being more sustainable with local foods, art, etc., and asked that the pilot program occur.

REGINE LEE said she grew up in Lafayette, volunteered her services and supported the pilot program. She said her employer conducts operations assessment, return on investments, analysis and supply chain marketing assessment and general operations improvement. She felt the community is committed, but there is concern from people about the viability and sustainability of the endeavor. She has a strong interest in the market, hoped for agreement and suggested it be done as a trial, a pilot, and then an assessment to bring out what worked and what did not.

Councilmember Anderson said one of the problems is having a good assessment of impacts from whatever location is chosen regarding traffic, vendors, storefronts, and he asked if Ms. Lee could work with her firm on a pro bono basis to analyze the situation. Ms. Lee said she emailed some people last week after learning about it and agreed her employer would support pro bono work. She said they have a strong practice in real estate relocation strategy, have partners who work with Fortune 500 companies who look for location strategies for their firms and she can provide an objective assessment.

Councilmember Anderson thanked Ms. Lee and questioned if this was conditioned on the Park Plaza site or other locations. Ms. Lee said she would be willing to do an analysis of other sites as well and work with the groups who have already began assessing sites, and will consider all viable sites.

The public hearing was closed.

Councilmember Anduri questioned and confirmed with Mr. Lifson that the limit was on the number of tickets for the Taste of Lafayette was 530 during the weeknight.

Councilmember Anduri referred to page 21, Summary of Door to Door Businesses in the Area, and questioned the results of the survey. He said the Assistance League of Diablo Valley testified that they were very positive because they thought the event would bring people to them. The first bullet is Sprint, and the owner was in favor; Squirrel's closes at 2:00 p.m.; Clean Cleaner said it would impact them but they would be in favor of it; Vino's was a definite no; the gas station voiced concerns, wanted a portable toilet, but were supportive in moving forward with it; the barber shop said yes—start now; Mr. Stuart is not in favor of it who has a building. He confirmed that all but one of the people who were impacted directly in front were in favor of it.

Councilmember Anduri said the 63 emails received are remarkable, and after reading the first 21, he felt they were an amazing set of letter because each were original, each were positive in that no one called the Councilmember idiots, and no one warned about the end of civilization, and none of the letters contained a threat. The remaining 42 were also very positive. He said he appreciates all the trouble the supporters have gone to in working out issues; they are handling barricades, signs, there will be no out-of-pocket costs except for police which is the norm for other events, he appreciates the Methodist Church stepping up and providing parking, felt patron parking is where the issue is and he appreciates the monitoring. Given the enthusiasm and support for this, he thinks a trial or pilot period is needed and see how it works. He said they hold many events where the parking seems to work.

Regarding the site, he strongly supports the Plaza site, thinks it is the area where you create the sense of community and get the multiplier effect. He did not have doubt that bringing people to the Plaza on a Thursday night will not bring benefit to merchants in the area. Supporters are working to make the site work, 80% of the Chamber is in support of the farmers' market, the merchants directly affected on the plaza with two exceptions are supportive, and this is an area where seniors in Chateau Lafayette can access, Deloitte will help with assessment, there is a will to make it work, and he feels the benefits have the potential to weigh out the negatives or issues.

Councilmember Federighi said she is starting to come to some agreement in giving the market a try, she approaches it with more caution, appreciates the fact that there will be no cost to the City of Lafayette, except for meeting time with staff and police work, but she felt it is minimal and borne by community volunteers. The vendor parking issue is taken care of and monitors will be present. She noted that there are four City parking spots on Golden Gate Way adjacent to the theater, which is currently metered. She asked if these could be blocked off and save those four spots for plaza park patrons only and have that monitored as well. City Manager Falk said they can be reserved, but they would need to be monitored.

Councilmember Federighi said she was told that the owner of Vino's could be badly impacted, and it looks like the area that goes into the Assistance League parking and apartments beyond that are protected, but she did not see that the little lane next to Vino's is protected. She wanted to be assured this is not blocked off.

Councilmember Federighi said a question was raised regarding the sustainability of monitors. Currently there is great enthusiasm and she hoped if the location proves to be the final location, the volunteers will remain in place to ensure this is workable. She agrees this is the best area for walk ability, for a sense of community and spillover; however, it is also the most impacted area for parking and traffic. She felt that assessment by Deloitte will be important, as well, and she was willing to support a pilot program.

Councilmember Anderson said he supports farmers' markets and thinks people will come from many other communities, and he is afraid it could be disastrous for those who have to get to the intersection because they either live in the area or commute. There is also a need for the market to grow, wants it to be successful, but there is not much room at Plaza Park. If the City finds that there are ways to mitigate the traffic, congestion is not that bad, monitors are keeping people out of the spaces, he thinks the City is cutting itself short in this location because of the fact that it just cannot grow. He is happy to hear there will be professional monitoring and analysis of the situation which for him, it may make for a reasonable experiment. While he thinks the City may regret, he is willing to try it, and supported the pilot project.

Vice Mayor Andersson said he had originally assumed Plaza Park was for the pilot program and then CCCFM would find a permanent site, but the more information that has been discussed, he is more convinced that it has some significant advantages over some other sites. It is where the multiplier effect will have the greatest effect, it has the potential for creating a lot of energy through the entire downtown area, it has the potential for people to walk on foot and go to the park, farmers' market and businesses, which would be useful. He was also impressed with the question of seniors and what they would do about getting to the spot. He said it could be that everyone is happy, that there are difficulties that can be mitigated, or it may not work well at all. In any case, it is only three nights. He appreciates CCCFM making the effort to return with solutions, and to identify what may need to be changed. If it is successful and needs to grow, it will be moved to a bigger site and it has a much better chance of working than starting out at a more remote site.

MOTION: Councilmember Anduri made a motion that the Council authorize a 3-night pilot program of the Lafayette Farmers' Market in the Plaza on the evenings of September 3, 10 and 17, 2009 with the understanding that the costs of the barricades and other equipment will be borne by supporters of the event, with the understanding there will be parking monitors monitoring the consumer parking, that there will be an assessment done after the event with a report to the Council.

Councilmember Federighi proposed a friendly amendment; that the four metered parking spaces adjacent to the theater be reserved for patrons of the Plaza Park businesses. Councilmember Anduri said he believes Vino's will be booked solid on Thursday night, he will do very well, he does not believe the reserved parking spaces would be necessary, but accepted the friendly amendment.

ACTION: It was M/S/C (Anduri/Federighi) that the Council authorize a 3-night pilot program of the Lafayette Farmers' Market in the Plaza on the evenings of September 3, 10 and 17, 2009 with the understanding that the costs of the barricades and other equipment will be borne by supporters of the event, with the understanding there will be parking monitors monitoring the consumer parking, that there will be an assessment done after the event with a report to the Council, and that the four metered parking spaces adjacent to the theater be reserved for patrons of the Plaza Park businesses. Vote: 4-0-1 (Ayes: Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: Tatzin).

Convene Redevelopment Agency

ACTION: It was M/S/C (Anderson/Anduri) to convene the Redevelopment Agency. Vote: 4-0-1 (Ayes: Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: Tatzin).

B. Glenda Warmoth, Assistant Planner
Eden Housing Inc.'s request to amend the loan agreement to include an additional $500,000 dedication of redevelopment agency funds to bridge funding gap for the senior housing project located at 3246 Mt. Diablo Blvd.
Recommendation: Approve the request and direct staff to draft a modified loan agreement increasing the Agency's contribution to the Eden senior housing project by $500,000 for consideration at the August 10, 2009 meeting.

Ms. Srivatsa said before the Council is Eden Housing's request for the Agency to commit an additional $500,000 of Redevelopment housing set aside funds towards the project. In 2008, the Agency approved an application for a 46-unit all affordable senior housing project on a site that is .8 acres in size, located on the east side of Blackwood Lane on Mt. Diablo Boulevard. The Agency

has committed $2.2 million toward the project and also pledged $800,000 in developer housing in-lieu fees.

After the approval, as Eden's planners refined the project, they found that the amount of funds from tax credit investors was going to be much lower than originally anticipated, which created a funding gap in the project. This gap is $500,000 and was brought to the Agency's attention last year and Eden pursued a waiver of development fees; totaling $500,00 of which would be approximately $150,000 in regional traffic mitigation fees and the remainder would be parkland dedication fees and walkways fees.

The Senior Housing Task Force met last winter and again in March to consider the request and members felt that they could not support the waiver of the regional traffic mitigation fees because it involved other communities. Eden agreed they would try and make up that amount by seeking other grant funds. The task force recommended dedicating an additional $350,000 to cover the project's funding gap with the funds coming not from fee waivers, but from the 20% housing set aside funds of the Redevelopment Agency.

Another reason why the request is being made is that Eden has applied for tax credits with the California Tax Credit Allocation Committee, which is a competitive process, and the application includes a tie-breaker when competing projects have identical scores. The greater the percentage scored the better chances there are to secure funds. Without this commitment of $500,000, Eden's core would be at 47%, but with it, the score would improve to 50%. Eden feels they have a much better chance of securing funding with this additional commitment.

Eden has tried to bridge the gap in many ways without success; staff supports the recommendation of the Senior Housing Task Force, that funds come from the Redevelopment Agency and not from fee waivers, staff believes there will be sufficient funds in the Redevelopment 20% set aside to cover this amount, but additional information will be discussed about it by the City Manager. If additional funds are granted, Eden would be successful in receiving the funds from CTCAC and this would make project funding complete and Eden would break ground next year. She noted Diana Elrod and Woody Karp were present to answer questions.

Agencymember Anderson referred to page 4 of the staff report and it has the matrix of various sources of funds, and questioned if $1.772 million was the gap we are trying to get from CTCAC.

Woody Karp, Eden Housing, said this tax credit round is unique and includes stimulus funding from the federal government outside of tax credit dollars. Because of the severe decline in investor appetite for tax credits, there was a precipitous drop in the cents per dollar that investors were willing to invest in projects. When they first brought the project forward, they had closed projects that were receiving $1.07 for every dollar of tax credits delivered. They ran a pro forma at 94 cents being on the conservative side. In today's climate, they are told they need to project 72 cents. Projects in less desirable communities are not anticipated to get any interest whatsoever. Therefore, the Tax Allocation Credit Committee has created two different mechanisms for funding projects in the country and in the state, and projects that have the opportunity of receiving some tax credit from investors will get gap funding or TCAC ARRA Gap Loan funding they are referencing. Projects in the central valley will not get any credits at all and they are looking at those projects as being fully funded with federal stimulus money.

Agencymember Anduri suggested listening to what is happening with Redevelopment funds prior to the request for the additional $500,000.

Administrative Services Director Tracy Robinson said in the budget package presented to the Governor, for the 2009/2010 fiscal year, was an ERAF shift of $1.7 billion from City and County Redevelopment areas. Lafayette's share of those dollars is approximately $1.1 to $1.2 million. It does not specifically affect housing money, which has been left alone; however, there are provisions that if cities cannot pay the shift out of their current redevelopment dollars, cities are able to use housing funds to pay the ERAF and cities have until 2015 to replace those funds in housing. For Lafayette's redevelopment area, based upon what is left to complete the library, to meet debt obligations, there is the potential that there will be very little money left in redevelopment. In order to complete the library, they will already have to borrow in upwards of $1.7 million from some other source.

Agencymember Federighi questioned if the Agency had the money for what is being requested by the State. Ms. Robinson said no, but it is a matter of where it will come from. There are outstanding obligations for the library bonds the Agency already entered into for redevelopment, and depending upon where the Agency wants to take the $1.7 million, $1.1 million will have to be paid to the state for the ERAF shift.

Vice Chair Andersson questioned and confirmed there was money in the housing portion of the RDA funds, which normally could not be used for other purposes. But, because of the state theft of funds, he questioned whether they will allow cities to borrow the housing fund. Ms. Robinson said she believes the Agency must basically prove that all money in Redevelopment has been spoken for. If this is the case, then agencies may borrow from its housing fund.

Vice Chair Andersson said then the city may end up needing the additional funds, we can borrow from the housing fund, but if already spent, it will not be there to borrow.

Executive Director Steven Falk apologized, as much of the information was occurring very rapidly. He believes that the project side of the Redevelopment Agency will need $1.7 million to complete the library. The Agency has 4 sources where it could capture money; 1) a loan from the Foundation; 2) a loan from the City Offices fund-$2 million balance; 3) the parking fund-$2 million balance; and 4) a provision in the law which has not yet been signed by the governor which would allow cities to borrow money from the housing side of the redevelopment equation.

Agencymember Anduri questioned if the law allows one to borrow from the housing side to complete a project? Mr. Falk said this is his understanding from what he read from League emails. Agencymember Anduri said he thought cities could borrow from the housing fund if it didn't have enough money from projects. Mr. Falk said staff thinks there are at least 3 sources to fund the remainder of the Library and therefore, staff believes the City can meet its ERAF payment and not be forced to borrow from the housing fund. Furthermore, projections suggest there is sufficient funding to make the loan of $500,000 and believes it can be done. However, all of the news is happening very quickly. He said staff had a conversation with Mark Curran from Piper Jaffrey who is unclear what the final outcome will be.

Agencymember Federighi confirmed the state's grab was $1.1 to $1.2 million for this year, and then another $230,000 to $300,000 next year.

Agencymember Anduri said the City does have the money in its redevelopment funds, so the issue is not repaying the state, but paying for the library. Ms. Robinson said it is both; there are $3.3 million balances in the redevelopment projects fund. If $1.1 million is paid to the State and we need $4 million to complete the library on the project side. Mr. Falk said this should leave the

housing side unencumbered and capitalized and well enough funded to support this request. However, until the Governor signs the bill, it is difficult to provide a strong recommendation.

Woody Karp noted the decision must be made this evening; the tax credit application is contingent upon the application submitting to the Tax Allocation Credit Committee a funding commitment resolution on or before August 17th. If it is not received by that date, the application will summarily dismissed and the project would not be considered eligible for any tax credit funding. Agencymember Federighi noted there was another Council meeting prior to August 17, but Mr. Karp felt this would cut it too close. He also pointed out that the fluid nature of the situation is significant. The fact that the Governor has not yet signed this into law requiring cities and counties and RDA's to pay money to the State, it is questionable as to whether they can mandate return of monies that area already committed. If monies are not committed, there is likelihood that the State would take back those monies more easily. CRA has announced they will file a lawsuit and is questioning the right to take redevelopment dollars. A prior lawsuit was filed and fought and it was determined that housing dollars could not be taken back. So the notion that the State could take back dollars for other purposes is questionable. He said certainly, their application will be dismissed and unfortunately, the project will not proceed if a funding commitment is not made for the additional $500,000.

Agencymember Anderson felt there were two issues; the housing money issue and also RDA project funds that could be taken by the State which do not affect the housing money. He questioned if there was a line between the two sources or not. Ms. Robinson said this depends on what money the Agency wants to use to pay the State ERAF shift. The take from the State does not specifically affect the housing money, so it depends on where the money is found to fund the ERAF shift. Seeing that there is money that has been committed to the Library project already, the Agency could potentially use all of the money in RDA right now to pay the library, which leaves no money to pay the ERAF and sources would need to be found for that. One source would be some of the housing money the Agency would borrow and then additional sources would need to be found elsewhere. She confirmed that by the end of the year, the Agency will have about $1.2 million total.

Mr. Falk further explained that there are sources by which could be used to finish the library; a loan from the Community Foundation, the City Offices fund or the parking fund. He said he know that the Council has had conversations about how to use the City Offices fund, specifically for the purchase and retrofit of the old library, and at the last meeting, the Council directed staff to begin a process whereby property owners would be notified in the downtown with an expressed interest to purchase properties for a parking lot using parking monies. Therefore, the Agency may have to decide what its priorities are. He said he knows the Library must be finished, but it is not clear whether it is possible to purchase and rebuild the old library or a parking garage and grant this request at the same time. Therefore, he suggested postponing the parking garage for a time or make another choice.

Vice Chair Andersson said in working backwards, if the Agency were to fund the Eden project with $500,000, there would be $700,000 left. If all other redevelopment funds were used to finish the library, there will be a $1.1-$1.2 million bill from the state, which would need to be borrowed from the housing fund but would not have enough money in it. On the other hand, the money could be left in and the Agency could borrow this to pay ERAF, complete the library, but the housing fund would be depleted until it is constituted with later funds. The alternative would be to use one of the three options to borrow money to complete the library so that we leave enough in the RDA to pay back the State, which would leave the housing funds in tact and which would allow the Agency to make the adjustment to the loan. So, if we were willing to borrow $500,000 from the Foundation,

this would leave $700,000 in the RDA, it would leave $500,000 left to fund the housing request, and still leave the City offices and parking in tact.

Agencymember Federighi said also there is a question as to whether the State can grab monies, both project and housing monies already committed. Mr. Falk said this is an open question, the CRA sued on this issue last year and prevailed, but of concern is that the legislature drafted the language knowing what they learned from last year's lawsuit to make it bullet proof.

Ms. Robinson spoke with the Executive Director of the CRA today and they will pursue a lawsuit. Mark Curran of Piper Jaffrey thinks there is a 50/50 chance for cities to prevail, but it is difficult to speculate on the outcome. He said he thinks there is enough money between the City offices fund and the parking fund for this all to work out, but if there is a large unanticipated change order or delay, skating on thin ice is a fair metaphor.

Mr. Karp said he has emphatically impressed on the situation, said they do not make the request to the City lightly, Eden has worked with the City for over 3 years now and respects and appreciates the tremendous support the City has shown throughout this process, the City's commitment of $3 million, matched equally with commitment through grant funds of $3 million, and he discussed Eden's application for AHP funds through the federal HOME loan bank which they were not successful in being awarded. They also went back to try to secure more funds through the County through the HOME or CDBG program, but unfortunately, they are not in a position to contribute additional dollars. He had many discussions with his financial consultant and stakeholders in the process on what it will take to be successful with the tax credit application, went back to the general contractor in estimating the cost of the project due to land costs, and in discussions with their financial consultant, they were told that even though Eden had a tremendous percentage of 47%, it simply was not going to be successful. In order to be competitive they had to reach the 50% threshold, they worked with the contractor to bring down the cost and are now before the City to make it work, and hoped the City supports their request.

Agencymember Anderson referred to the $500,000 which gives a better score to get credits and questioned the types of credits and what would happen it they are not successful. Mr. Karp said the tax credit application anticipates they would get 72 cents on the dollar from an investor. The difference of what it would take for the project to work is calculated to be the amount specific as the ARRA funds which is shown in the breakdown of project costs. Together along with the contribution from the City meets the projected total project cost. With that, the Tax Credit Allocation Committee is ready to proceed. He said Eden would not be coming back to the City for more dollars and they would be able to proceed if awarded with a project and start in January. If the Tax Credit Allocation Committee does not award the project, Eden would re-apply next March, and he was not sure what the climate would be, and did not know whether there would be stimulus money or not. He said he has three investors that have expressed extreme interest in the project and Eden is confident that the project would proceed if the tax credit award is received.

Agencymember Anderson questioned why the investors could not come up with the $500,000. Mr. Karp said the funds have to come from the City; the investors pay cents on the dollars for the tax credits, they do not make a separate award or contribution to the project. The tie breaker calculation is based upon public money support and permanent loan support.

Agencymember Anderson questioned if waiving the fee was still an option to bring this into a 50% level. Mr. Karp said yes and no, because there is $503,000 in fees of which approximately $150,000 is for the Lamorinda Transportation Fee. That fee could not be waived by the City alone. So, there would not be sufficient funds to waive all the fees. It could be done in combination, but

he believes this scenario takes fees that would otherwise be utilized by the Parks and Recreation Department and it was the Senior Housing Task Force recommendation to take this route.

Agencymember Federighi said it is not just Parks and Recreation but other impact fees that would be involved, so this would be using Redevelopment dollars to cover fees. Agencymember Anderson said this happens later in the process and there is time that goes by which allows for more accumulation of fees for RDA Housing monies. Agencymember Federighi said the recommendation is to use housing set aside funds.

Ms. Srivatsa said the fee waiver request went to the Parks, Trails and Recreation Commission and there was very little support for this because it was a substantial amount of money and the Commission planned their CIP for the next five years using these funds. She said much of this has come about late in the afternoon and staff has been trying to arrive at solutions with Eden to see how the City can stagger the money or defer payment. The preferred option for Eden would be to commit the $500,000 now. Option 2 would be for the City to commit $150,000 which is a regional traffic mitigation fee for payment in February 2010 when Eden will pull the building permit, and then to defer payment of the $350,000 to the Certificate of Occupancy. The City will still be making a commitment for the $500,000 but part of the payment would be made only in 2011 when Eden Housing would complete its project. She said this was done for the Woodbury project. The third and least desirable option would be to waive the impact fees altogether.

Agencymember Anderson said under the second scenario, the Agency would have more time to accumulate dollars in the RDA and he questioned what is accumulated in 1-2 years. Ms. Robinson said about $600,000 a year in housing is accumulated.

Agencymember Federighi questioned if there would be a disadvantage to the project to defer funds. Mr. Karp said if fees charged by the Agency are deferred until Certificate of Occupancy and funds coincidentally are paid by the RDA to the project at Certificate of Occupancy, there would be no negative impact on the project. He did not think there should be a nexus in the legal documents of those two things because it must be clear that this is RDA commitment to fund project costs and it is just a waiver of the fees until the Certificate of Occupancy is issued by the Agency.

Ms. Srivatsa said a downside of deferring fees is that the Parks, Trails and Recreation Department will not receive the funds next year but rather a year or so after that.

Diana Elrod added that a bird in hand is worth two in the bush, and having $500,000 right away would be ideal. In discussions with Eden, as long as the Agency can commit the full $500,000 today but with the understanding it would be a phased payment, then that money is tied up. She did not know what would happen with the State in the next few months anyway, and in her opinion, having the $500,000 committed to the project however it is paid out is a benefit to the project. It gives a greater level of certainty. She said lastly, she believes that if her calculations are correct, if the Agency were to front the money for the Lamorinda Transportation fee of $150,000 from funds, there would still be roughly enough money in the 20% set aside if the Agency had to pay the RDA ERAF contribution from that amount. The money could then be made up for the other $350,000 the next time there is money deposited in the low and moderate income fund.

Mr. Falk said he and Ms. Robinson may have presented a scenario that did not reflect the favorable cash situation the Agency is in. He believes $1.7 million will be needed to finish the library than what is currently in the RDA fund. There are three sources by which the Agency Board can fund this, as well as an $8 million General Fund reserve. He is comfortable that the

Agency will have the resources to fund the library without needing to borrow from the housing fund. Given this, the Agency has the ability to fund the request if desired.

Mr. Karp said he has all the confidence in their application, he feels it is strong, they have maximized their opportunity but does not want to give the impression that it is a shoe-in, as this was such a unique round. The Committee canceled the first tax credit round and because of stimulus money, many more projects applied than ever before, so there are 20 projects competing and only 3 will be funded. Therefore, they want to do everything they can to maximize their score to succeed, but they do not know whether or not they will be successful, but will know in late August.

Agencymember Anduri questioned the availability of HUD funds. Mr. Karp said there was supposed to be a HUD application in June, which did not happen. HUD has not indicated when it would release its application. It could be next month or in six months. They conducted a HUD application for which they did not succeed and they restructured the deal as a tax credit deal which had different factors and implications, and he thought it maximized getting a project off the ground. This is something to strongly consider, but they need to review the HUD application or consider doing another tax credit application in March.

The public hearing was opened.

JAY LIFSON, Chamber of Commerce, said he knows this is a difficult situation, he has no expertise or knowledge with regards to funding the completion of the library or the Eden housing project, but in 1992 when parking meters were installed in the City, the Chamber supported this with the knowledge that the Council had made a promise to save that money to build parking. He reminded the Council that the Chamber has on many occasions asked that parking fund monies not be used for any other reason except to build parking. He acknowledged this may be a loan, but it also may be the right time to buy parking.

CAROL SINGER said if Parks and Recreation CIP funds were used, it would affect all of their projects, said they work hard to complete their own projects and did not want funds cut. She asked the Council not to stop their progress.

The public hearing was closed.

Agencymember Anduri questioned whether the Agency needed to have on its agenda to approve a revised loan. Ms. Subramanian said staff would need to return with the actual documents, but Eden is looking for a verbal commitment.

Agencymember Anderson referred to the funds coming from the Housing fund, and said it seemed there would be a limitation on funds the Agency could spent on senior housing. Ms. Elrod said this would be sufficient in terms of future projects; as long as the Agency spends $2.7 million on senior housing, it must spend at least $3.44 million on other housing by the end of the implementation plan plus 5 years, or by 2020.

ACTION: It was M/S/C (Anduri/Federighi) to approve the request and direct staff to draft the modified loan agreement increasing the contribution to Eden Housing by $500,000 to be brought back for final approval at the August 10, 2009 City Council meeting. Vote: 4-0-1 (Ayes: Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: Tatzin).

Adjourn Redevelopment Agency

ACTION: It was M/S/C (Anduri/Anderson) to adjourn the Redevelopment Agency. Vote: 4-0-1 (Ayes: Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: Tatzin).

8. STAFF REPORTS

A. Tony Coe, Engineering Services Manager
Updating City's Americans with Disabilities Act Transition Plan

Recommendation: Adopt Resolution 2009-43 updating the City's policy for installing disabled access curb ramps, removing barriers to path of travel facilities, and amending the City's Americans with Disabilities Act Transition Plan.

Engineering Services Manager Tony Coe said in 1998, the Council adopted a policy to comply with the ADA Act and a transition plan was prepared which dealt mainly with the Community Center. Subsequently, there was a lawsuit against the City of Sacramento which decided ADA extends beyond buildings and also applies to paths of travel outside. As a result of this, in consultation with the City Attorney's office, staff has been preparing a self-evaluation and transition plan update to include path of travel, meaning sidewalks, and walkway system and curb ramps at intersections throughout town. In developing the update, our priorities will focus on path of travel that will provide access to government offices and major transportation facilities, service centers, commercial retail centers and schools.

The Transition Plan attached to the staff report focuses on those priorities. An inventory was done on sidewalks providing access to those facilities, as well as curb ramps at intersections. We have also documented the effort spent to date on accessibility projects and the good news is that there are no locations that would constitute a high priority. Most "deficiencies" have to do with not strictly complying with the most current construction standards. In fact, Coe said all paths of travel facilities are functional, they do not block passage, but technically some are slightly deviating from the most current standards. Staff proposes updating them and bringing them into current standards as part of the City's CIP program, which has been our practice over the years. Whenever a project is done that involves a path of travel facility, it is updated to the current standard.

Councilmember Anduri asked if there was a way for the City to get ahead of the curve at some point and questioned the 40 areas identified. Mr. Coe said he has not reviewed them in terms of work schedule toward finally completing them all, but they are generally located in the downtown and as part of implementation of the Downtown Master Plan, staff will eventually get to all of them. Next year's project will address many within the project's limit.

Councilmember Anduri questioned when the matter would next come before the Council for an update. Mr. Coe said he did not envision the plan needing another update, unless staff needed to update the plan or built a new facility or redeveloped an area that caused a path of travel to fall into the high priority designation. Councilmember Anduri asked that a work status update of the current plan could be provided in two years, and Mr. Coe agreed this could be done.

ACTION: It was M/S/C (Anderson/Federighi) to adopt Resolution 2009-43 updating the City's policy for installing disabled access curb ramps, removing barriers to path of travel facilities, and amending the City's Americans with Disabilities Act Transition Plan, and to update the Council in two years. Vote: 4-0-1 (Ayes: Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: Tatzin).

B. Jennifer Russell, Parks, Trails & Recreation Director

Use of Measure WW funds for the Parks, Trails & Recreation Capital Improvement Projects
Recommendation: Discuss and direct staff.

Parks, Trails and Recreation Director Jennifer Russell said last May the Parks, Trails and Recreation CIP was presented and at that time the Council wanted to postpone the item. Councilmember Anduri was assigned to meet with Commission members and the Open Space Committee to look at the $1,082,501 in Measure WW bond money. She noted that the City's budget had already been approved, staff time was being allocated for project management and the Measure WW application process had a very narrow window to apply for funds. She said a flow of funds chart outlined their plan and funding for specific projects already identified in the budget.

She said she met with Engineering staff and reviewed scheduling. Because of the dedication of staff time for the Library and the Manzanita Room improvements timing, some of the priorities were realigned. The Manzanita Room improvements were deferred and the Burton Ridge Trail Connector was brought forward. This project was the most expensive of all capital projects and would require additional funding or phasing. She said they are also looking at building the bridge at a later time. She suggested Councilmember Anduri summarizing the meeting.

Councilmember Anduri said a meeting was held recently, he identified those present at the meeting and said interestingly, everyone supported each other's goals. They discussed timing issues for the trail, the CIP and they agreed to split the funds 50/50 between PTR needs and potential open space uses. However, he said this is a tentative agreement and representatives were to return to the Commission and Committee to further discuss it and then return with information.

Councilmember Anderson questioned and confirmed that a response should be received from the Commission and the matter could be returned to the Council. Mr. Falk said the total amount available is over $1 million in Measure WW funds that the City will receive, and roughly half would be devoted to recreation purposes and the rest to open space acquisition purposes.

There were no public comments.

Ms. Russell said this will impact their overall CIP and she will bring back another version, depending upon how things play out, most likely in October.

9. PUBLIC HEARING

A. Mark Robbins, Code Enforcement Officer

1. Special Assessment/Recovery of Costs – Administrative Citation Issued for Multiple LMC Violations, and costs incurred for property nuisance abatement at 3195 Condit Road (APN 185-103-017); Joel Barcelona, Owner-of-Record, and Countrywide Home Loans, Inc.
Recommendation: Conduct the public hearing, consider and approve the lien and direct the city clerk to record the special assessment against the property.

Code Enforcement Officer Mark Robbins said the purpose of the hearing is to recover costs for an assessment for citation and actions at 3195 Condit Road. In December of 2007, Building staff noticed the property owners to clean up their property, issue citations and abatement costs, and staff is seeking to have an assessment placed in the amount of $15,000. Staff requests Council approve resolution to have a special assessment placed to recover costs.

Vice Mayor Andersson referred to the $15,000 cost and noticed there is a $10,000 fine and a $4,750 cost. He confirmed there is an additional $250 for the placement of the levy. Vice Mayor Andersson questioned if Countrywide was included solely as a lender or an owner also. Mr. Robbins said he believed they are the lender.

Contra Costa Building Official, Greg Wixom said in the title report, Countrywide is listed as the lender and because they were recently acquired by Bank of America, staff also included Bank of America as being the owners now. They believed the property has passed on as a bank owned property.

Councilmember Anduri questioned what the current state of ongoing maintenance was of the property. Mr. Robbins said there is no ongoing maintenance, the building remains vacant and there may also be future enforcement action.

The public hearing was opened.

Public Comments:

ANDY EPPINGER said he shares a fence with the home. He said the home is an eye sore, the neighborhood is frustrated and asked the City to place as much assessment it can on the house so as to get the bank to act on it. He said the roof is gutted out, the wood rotted, and whoever purchases it will need to completely rebuild it.

The public hearing was closed.

Vice Mayor Andersson confirmed with Mr. Robbins there had been no good faith action to try and comply and the house has been abandoned.

Councilmember Anduri questioned and confirmed that Mr. Robbins had not received any communication. Mr. Wixom said he had one telephone call from Countrywide who actually misunderstood the letter they received from him imposing the penalty. When he tried to clarify the issue, the representative said she could not discuss it any further and hung up. Therefore, there has been no interest in this whatsoever. He said it is his understanding that the Bank of America is the property owner.

Councilmember Anduri said the situation is extremely frustrating because it is way beyond $15,000 in terms of impact on neighbors. Mr. Robbins agreed, and said not only do they look at aesthetics but also health and safety. Part of the cost of the abatement action included securing the property, draining of a partially filled pool, securing fencing and the structure itself. He said their intent is to continue on to do the work until it turns over and assess the property.

Councilmember Anduri questioned if there was any foreclosure or condemnation action the City can take. Ms. Subramanian said in severe cases the City can get involved and this is similar to a condemnation action, but only in severe cases where drug activity may be present.

Mr. Robbins said lenders will bundle houses and have them go from lender to lender and it will be hard to find the trail of exactly who the owner of record is until the financial will is there for the lender.

ACTION: It was M/S/C (Federighi/Anderson) to adopt Resolution 2009-45 which confirms the attached report; approve the lien and direct the city clerk to record the special assessment against the property. Vote: 4-0-1 (Ayes: Andersson, Anduri, Federgihi, Anderson; Noes: None; Absent: Tatzin).

2. **Special Assessment/Recovery of Costs – Administrative Citation Issued for Multiple CCCBID and LMC Violations (addition to a commercial building without permits) at 284-286 Lafayette Circle (APN 243-160-012); Herbert R. Monroe Trust, Property Owner**
   Recommendation: Conduct the public hearing, consider and approve the lien and direct the city clerk to record the special assessment against the property.

Mr. Robbins said this building relates to a commercial building in Lafayette Circle. It is similar in the sense that the City is looking to recover costs. Mr. Wixom, on behalf of the City, had previously issued a citation for incomplete work for an addition to the building and staff is looking for placing an assessment and adoption of a resolution for cost recovery for illegal additions and other associated building problems.

Councilmember Anduri questioned whether what is before the Council is a monetary remedy in place. Mr. Robbins said it is an administrative penalty; to date, corrections have not been made. Councilmember Anduri questioned and confirmed there was still an expectation for corrections to be made.

Mr. Wixom said in such an instance, they give the property owner an opportunity to appeal this particular charge. After the appeal is heard and a decision rendered, if the violation continues, another citation will be issued and another administrative penalty pursued.

The public hearing was opened.

DAVID BOWIE, representing Herbert R. Monroe, said the building has housed Mr. Monroe's optometry practice for many years, said this is an attractive, small building that impacts no one, and it has served the community for many years. He said this is not a matter of a fact that the City or County has incurred costs, but a penalty assessment. He said Dr. Monroe did a minor addition to the rear of the building and permits were not obtained but should have been at the time. Currently, there is a tenant who leases that space for which he has a legal obligation as well as code requirements for occupancy.

Mr. Bowie said he has been assured by the architect who drew the plans and the builder that there is no code issue, but to rectify the situation, one must file a new building permit application, pay the penalty fee and then have it inspected and finaled. In this instance, they could not do this because two code requirements are called into play by virtue of this minor addition; a planning requirement for parking and the amount of open space required. He said the building would not comply with open space anyway and it is grand-fathered as a non-conforming legal use and it would never meet the open space requirement. However, technically a variance application would need to be filed as well as a variance for the parking requirement.

Mr. Bowie said he met with Glenda Warmoth and based upon discussions, there is a fair chance of obtaining the two variances required. However, prior to addressing the building code issue, the planning issue must be satisfied. He attempted to use the drawings put in place by the tenant, but the tenant's designer was not an architect and was not able to do the type of work needed. Therefore, Mr. Bowie said he retained an architect in San Francisco who is working on the project.

One thing that did not appear in the staff report was a letter dated June 23, 2008 from the County; Lamorinda Building Inspection, to Dr. Monroe indicated there was a notice of intent to administer an administrative citation and an application would need to be filed to rectify this by Thursday, July 10, 2008 and if this did not happen, a citation would be issued. Dr. Monroe did file an application with planning on July 9, 2008 to attempt to proceed with the application. After some time went by when it was learned they did not have everything they needed. From that time, Dr. Monroe has paid the fees for the variance and planning applications and the intent is to proceed with that. Therefore, he felt it was unfair to assign a penalty, acknowledged there are costs involved, and asked the Council not to proceed and they will complete the process to either get a variance and move forward or tear down the less than 200 square foot space. He said he thinks they will be in compliance with parking because it does not increase the out of conformity status of the building by more than 10%.

Councilmember Anderson said information indicates that the notice of the application was incomplete and was sent on August 8, 2008 and at that time, there was no response. The only other letter he has is October 28, 2008 from Mr. Bowie's office which indicates he is working on the situation. There is also a letter dated December 2, 2008 that states it is surmountable but he is still working on the situation. It is almost August 2009 and he questioned what has been happening in the interim.

Mr. Bowie said he met with and sent a letter to Glenda Warmoth in December, advised Dr. Monroe that it would be necessary to retain a licensed architect who would be able to draw the plans on an as-built basis to identify all issues. He also wrote to Howard Lassiter, Architect retained by Dr. Monroe, and gave him the background on the project and understood that was moving forward. He agreed he could have been more diligent;, but they obviously want to finish the process and he will ensure it is addressed.

Councilmember Federighi said Dr. Monroe has received notice to comply as early as February 15, 2007, and finally there is submission of a project plan that is incomplete, there is no response and then an email regarding the application being incomplete, and notifying Mr. Bowie that if no response is given, the City will proceed with code enforcement. On October 28th a response is written that Mr. Bowie is working with Mr. Monroe but nothing happens until December 2nd.

Mr. Bowie agreed it was a long time, but initially he did not believe Dr. Monroe understood that this wasn't a matter other than pulling a building permit and moving forward. Secondly, he did meet with Ms. Warmoth a couple of times on the issue, but he sent the letter in December anticipating he would receive the work of the architect which did not arrive. He agreed he "dropped the ball" but this is not a health and safety situation or adverse impact, or one of terrible urgency.

DR. HERBERT MONROE, said when he first received the letter, he and the tenant went to the Building Department. They were not aware of the fact that they needed to go to the Planning Department and they never heard from the building inspector.

Vice Mayor Andersson said it was almost one year from that time and another 8 months since notification was given. Councilmember Anduri believed it was beyond that timeframe; as the first document is dated February 15, 2007 was from Contra Costa County which states that, "...within 15 days the following must be submitted to the City of Lafayette Planning Department" so the owner was clearly notified that the Planning Department was the contact.

Mr. Bowie said the ambiguity is, is that Dr. Monroe is not used to dealing with this sort of issue, the construction was done by the tenant, and he turned to the tenant with the hope to work out the situation. In addition, the tenant's architect has a language problem and he felt this was the reason for the initial delay. He agreed it needs to be completed, but he did not believe there was a need to be penal about it.

The public hearing was closed.

Councilmember Anderson said he could not see any reason to not follow the City's process and put a lien on the property per regulations and hope this encourages all parties to become more serious about getting the work done. He supported moving forward with adoption of the resolution. Councilmember Federighi agreed.

Councilmember Anduri said the property owner's request could be considered because there is actually no harm in the sense that no one sees the property, it is a small addition, and he questioned if this is a usual defense. Mr. Wixom said he has not heard this defense. He said the structure is visible from Mt. Diablo Boulevard, Lafayette Circle, from the sidewalk and street and from the roofline up. The structure has been attached to the back of an existing building, there is a doorway that is cut through the building that goes into the addition. Because the building has not been inspected, there is no way to know if wiring or plumbing was done to code, how the new structure is attached to the old structure, whether it will tolerate earth movement, wind, etc. He said most people who file for a building permit are reassessed and they pay taxes and those that do not are avoiding property taxes and increased valuation, so there are financial incentives for those not doing it right by violating the code. Those who do it right contribute to the community, pay taxes, and ensure the building constructed will meet code and be safe.

Vice Mayor Andersson said he was once a hearing officer in Oakland for condemnations, and if work was progressing, he would usually give them time to address the problem; however, he was distressed that even given Dr. Monroe's awareness of the situation, Mr. Bowie is well versed and has been involved since October and let it slide for a year. Therefore, good faith must be accompanied by actions, which have not been taken in this situation, and he supported the resolution.

ACTION: It was M/S/C (Anderson/Federighi) to adopt Resolution 2009-44 and the attached report, approve the lien and direct the city clerk to record the special assessment against the property. Vote: 4-0-1 (Ayes: Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: Tatzin).

B. Michael Cass, Assistant Planner
ZT02-09: Interim Urgency Ordinance 587, Establishing a Temporary Moratorium on the Establishment and Operation of Medical Marijuana Dispensaries
Recommendation: Adopt Ordinance 587.

Assistant Planner Michael Cass waived the staff report and asked the Council for questions.

There were no public comments or questions.

ACTION: It was M/S/C (Anderson/Federighi) to adopt Ordinance 587; ZT02-09: Interim Urgency Ordinance establishing a temporary moratorium on the Establishment and Operations of Medical Marijuana Dispensaries. Vote: 4-0-1 (Ayes: Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: Tatzin).

10. CONSENT CALENDAR

Vice Mayor Andersson noted the addition of Item 10.I to the agenda. He asked to remove Item 10A, Councilmember Federighi requested removal of 10I and Councilmember Anderson requested removal of 10C.

ACTION: It was M/S/C (Anderson/Anduri) to approve Consent Calendar items B, D, E, F, G and H. Vote: 4-0-1 (Ayes: Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: Tatzin).

B. 811 Topper Lane – Request for Fence Encroachment into the City Right-of-Way
Recommendation: Approve encroachment into the City Right-of-Way along 811 Topper Lane and authorize the Mayor to execute an amendment to the existing encroachment agreement with applicant.

D. Award Contract for Lafayette Community Center Re-Roofing
Recommendation: Adopt the project plans, specifications, and working details for the Lafayette Community Center Roof Restoration Project and award contract to the lowest bidder, Reinhardt Roofing, in the amount of $119,500.

E. Negotiations Regarding Acquisition of Olympic Blvd. Property - APN 185-190-006-6
Recommendation: Schedule a Closed Session on August 10, 2009 with City negotiators to discuss price and terms for the acquisition of the Olympic Blvd. property APN 185-190-006-6.

F. Policy for Smart Cell Phones for City Employees
Recommendation: Approve policy for voice and data plans for city authorized cell phones.

G. Authorization to Submit a Safe Routes to Transit Grant Application
Recommendation: Authorize staff to submit a Safe Routes to Transit grant application.

H. Comments on Contra Costa Transit Authority's draft Countywide Bicycle and Pedestrian Plan
Recommendation: Authorize the Mayor to sign the comment letter to the Contra Costa Transit Authority regarding the draft Countywide Bicycle and Pedestrian Plan.

Items Removed:

A. City Council Minutes
July 13, 2009
Recommendation: Approve.

Vice Mayor Andersson requested that Sheryl "Knoll's" name be spelled as "Noll." Councilmember Anderson referred to page 19, stating that Beth Ferree's "new word" is spelled "locavore".

ACTION: It was M/S/C (Andersson/Anderson) to approve the minutes of July 13, 2009, as amended. Vote: 4-0-1 (Ayes: Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: Tatzin).

C. Parks, Trails and Recreation Commission 2008-2009 Accomplishments and 2009-2010 Goals

Recommendation: Review and approve the Parks, Trails and Recreation Commission 2008-2009 Accomplishments and 2009-2010 Goals.

Councilmember Anderson questioned whether there was a change in the report due to the previous discussion, as well as the need for a decision on Measure WW money. Mr. Falk said Ms. Russell indicated that as a result of the funding reallocation, the work on the Manzanita Room may be delayed, the last page talks about it, and its timeframe is nonspecific

ACTION: It was M/S/C (Anderson/Anduri) to approve the Parks, Trails and Recreation Commission 2008-2009 Accomplishments and 2009-2010 Goals. Vote: 4-0-1 (Ayes: Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: Tatzin).

I. Intention to Negotiate for Purchase of 66 acre parcel: APN 238-080-036
Recommendation: Schedule a Closed Session on August 10, 2009 with City negotiators to discuss price and terms for the acquisition of a 66 acre parcel denoted by APN 238-080-036.

Councilmember Federighi preferred that the motion be that the Council declare its intention to explore or discuss the purchase of the property and adjourn to a closed session for the purpose of giving direction to the City Manager. She is reluctant to say "purchase" at this point and be too specific about terms and conditions.

Mr. Falk said this is a Brown Act technical question to go into Closed Session, and Councilmember Federighi noted the recommendation was different in the staff report, but confirmed it would not imply purchase with the City Attorney. Ms. Subramanian noted the same refers to Item E which is similar and she could make it consistent to indicate "discuss" rather than "purchase."

ACTION: It was M/S/C (Federighi/Anduri) to schedule a Closed Session on August 10, 2009 with City negotiators to discuss price and terms for the acquisition of a 66-acre parcel denoted by APN 238-080-036. Vote: 4-0-1 (Ayes: Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: Tatzin).

11. COUNCIL/COMMISSION REPORTS

A. Councilmember report on activities and consideration of matters a councilmember wishes to initiate for placement on a future agenda.

Vice Mayor Andersson reported attending the League of California Cities Dinner in Oakland wherein an economist spoke. He also attended both days of the League of California Cities Summit, of State, County Association and State School Board Association officials and distributed notes to Councilmembers on the event. Discussions were wide-ranging, focus was on changing local and state governance, protection of revenues, balancing budgets, and various strategies.

Councilmember Federighi noted her attendance at the second day of the Summit, noting it was clear that a ballot proposition is being pushed to change the voting requirement for a state budget to 2/3. She also heard a discussion by Repaircalifornia.org who is planning to put a ballot measure calling for a constitutional convention and she discussed the three ways delegates could be chosen.

Councilmember Federighi said she requested that the issue of looking for potential parking spaces be put on the next agenda, and Mr. Falk said he understood this to be agendized when there was a full Council, and agreed to schedule it for the next meeting.

12. WRITTEN COMMUNICATIONS

A. **Request from the Department of Health & Human Services to recognize September 2009 as National Alcohol & Drug Addiction Recovery Month.**
Recommendation: Receive and file.

ACTION: It was M/S/C (Anduri/Anderson) to approve proclamation recognizing September 2009 as National Alcohol & Drug Addiction Recovery Month. Vote: 4-0-1 (Ayes: Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: Tatzin)

B. **Letter dated July 16, 2009 from Jim Fitzsimmons, Lafayette Homeowners Council Chairperson, requesting that any Downtown Strategy and Specific Plan (DSP) use of the term "sight lines" as descriptive of scenic corridors be changed to "scenic view corridors".**
Recommendation: Discuss and direct staff.

Councilmember Federighi questioned whether the Council could take action on the item, and Ms. Merideth said the term is included in the General Plan and that she this as another comment on the Plan, which are received all the time.

ACTION: It was M/S/C (Federighi/Anduri) to receive and file. Vote: 4-0-1 (Ayes: Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: Tatzin).

C. **E-mail received July 21, 2009 from Gint Federas, on behalf of the Lafayette Moraga Youth Association, requesting a proclamation recognizing the 49th Annual Contra Costa County Championship Swim Meeting to be held August 15 and 16.**
Recommendation: Discuss and direct staff.

ACTION: It was M/S/C (Anduri/Federighi) to approve proclamation recognizing the 49th Annual Contra Costa County Championship Swim Meet on August 15 and 16. Vote: 4-0-1 (Ayes: Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: Tatzin).

13. ADJOURNMENT

The City Council adjourned the meeting at 10:50 p.m. to the next Regular City Council meeting on August 10, 2009.

APPROVED:

_____
Don Tatzin, Mayor

ATTEST:

_____
Joanne Robbins, City Clerk